IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

WEDNESDAY, THE 18TH OCTOBER 2006 / 26TH ASWINA 1928

Crl.MC.No. 410 of 2005()

AGAINST THE ORDER DATED 14/01/2005 IN CRMP.2535/03 IN SC.1588/2001 OF SESSIONS COURT, TRIVANDRUM

PETITIONER: 5TH ACCUSED:

RAJESH, S/O.VIJAYAN,
T.C.XI/423, KATTANKALIL VEEDU,
KOWDIAR VILLAGE, TRIVANDRUM.

BY ADV. SRI.S.RAJEEV

RESPONDENTS: COMPLAINANT:

STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM, (CRIME NO.58/96 OF VANCHIYOOR POLICE STATION).

BY PUBLIC PROSECUTOR SRI.JIKKU

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 18/10/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.T. SANKARAN, J.

CRL.M.C.NO. 410 OF 2005

Dated this the 18th day of October,2006

O R D E R

The petitioner is accused No.5 in S.C.No.1588 of 2001, on the file of the Court of the Special Judge for Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. The allegation against the petitioner and the other accused persons is that they committed offences under Sections 143, 147, 452, 294 (b) read with Section 149 of the Indian Penal Code and Section 3(i)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. It is alleged that the accused persons trespassed into the residential house of the defacto complainant, who is a member of the Scheduled Caste, and insulted him by calling his caste name.

2. The case was committed to the Sessions

Court, Thiruvananthapuram, which is a Special Court for trial of offences under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. The petitioner filed an application, Crl.M.P.No.2535 of 2003, before the Special Court under Section 227 of the Code of Criminal Procedure to discharge him. The Court below dismissed that application. The prayer in this Criminal Miscellaneous Case is to quash the order passed by the court below in Crl.M.P.No.2535 of 2003. It is stated by the petitioner that investigation in the case was conducted by the Circle Inspector of Police and the charge was also laid by him. This is not disputed by the respondent. The contention of the petitioner is that under Rule 7 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, 1995, a case under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act shall be investigated by a Police Officer not below the rank of the Deputy

Superintendent of Police. Rule 7 reads as follows:

> "7. Investigating Officer:- (1) An offence committed under the Act shall be investigated by a police officer not below the rank of a Deputy Superintendent of Police. The investigating officer shall be appointed by the State Government, Director General of Police, Superintendent of Police after taking into account his past experience, sense of ability and justice to perceive the implications of the case and investigate it along with right lines within the shortest possible time.
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> (2) The investigating officer so appointed under sub-rule (1) shall complete the investigation on top priority within thirty days and submit the report to the Superintendent of Police who in turn will immediately forward the report to the Director General of Police of the State Government.
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> (3) The Home Secretary and the Social Welfare Secretary to the State Government, Director of Prosecution, the officer-in-charge of Prosecution and the Director General of Police shall review by the end of every quarter the position of all investigations done by the investigating officer."

3. The purpose of providing that the investigation shall be conducted by an officer not

below the rank of Deputy Superintendent of Police is indicated in Rule 7 itself. In view of Rule 7, the Circle Inspector of Police is not entitled to conduct investigation or to submit the final report. The Madras High Court in **Easwaramoorthy** v. **State** (2002 (2) KLT Short Notes Case No.19), held that the final report laid in respect of an offence under the Scheduled Castes and Scheduled Tribes (Prevention of Attrocities) Act is liable to be quashed if the investigation was conducted by an Inspector of Police and not the Officer as provided in Rule 7. The Andhra Pradesh High Court in **The Public Prosecutor, High Court of A.P. Hyderabad** v. **Kusuma Mallaiah and others** (2005 CRL.L.J.1162), did not interfere with the order of acquittal on the ground that the investigation of the case involving an offence under Section 3 of the Scheduled Castes and Scheduled Tribes (Prevention of Attrocities) Act was not conducted by an Officer appointed to

investigate the same. The Madhya Pradesh High Court in **Dhanraj Singh** v. **State of M.P.** (2005 CRL.L.J. 3782, set aside the conviction and sentence of the accused on the ground that the investigation in respect of the offence under Section 3(i)(x) of the Act was not conducted by a Police Officer of the rank of Deputy Superintendent of Police. It was held that the special provision contained in Rule 7 has a purpose and if it is not followed strictly by the investigating agency, the purpose of the Act cannot be achieved. In **Muhammed** v. **Sukumaran** (2001 (1) K.L.J.154), a learned single Judge of this Court held that investigation by an Officer below the rank of Deputy Superintendent of Police would be a sufficient ground to quash the charge. However, the learned Judge held that considering the nature of the allegations and circumstances and also the object of the special legislation, the entire proceedings could not be quashed on the ground that the case was

investigated and the charge was laid by the Circle Inspector of Police. The charge was quashed and a direction was issued to the competent investigating agency to investigate the crime in accordance with law on the basis of the First Information Report.

4. In **Varkey** v. **State of Kerala** (1993 (1) KLT 72), it was held that the Sessions Court or the Special Court had no jurisdiction to take cognizance of a complaint filed by such a complainant, who is not an Officer authorised under the Narcotic Drugs and Psychotropic Substances Act, 1985. No charge could be framed in such a case and the charge would be without jurisdiction. It was further held that the trial which followed the said charge must be treated as nonest and, therefore, there cannot be any conviction or acquittal and the court should have discharged the accused under Section 227 of the Code of Criminal Procedure. **Joseph** v. **Sub Inspector of Police** (2003 (3) KLT

718) and **Sinu Sainudheen** v. **Sub Inspector of Police** (2002 (1) KLT 693) were cases in which offence under the Immoral Traffic (Prevention) Act, 1956 was involved and search was conducted by an Officer not authorised by the Rules. In Joseph's case as well as in Sinu Sainudheen's case the First Information Report and all proceedings pursuant to the same were quashed.

5. In the facts and circumstances of the case, I do not think that an investigation by the proper officer at this distance of time would be warranted. The offences involved include the offences under Sections 143, 147, 452 and 294(b) read with Section 149 of the Indian Penal Code. On the ground that the investigation was not conducted by an officer authorised in Rule 7, the proceedings in respect of the offence under the Indian Penal Code cannot be quashed. The Special Court has ample authority to proceed under Section 228 of the

Code of Criminal Procedure in such a situation. Accordingly, the petitioner and all the other accused persons in the case are discharged for the offence under Section 3(i)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. The Special Court shall proceed with the case under Section 228 of the Code of Criminal Procedure and pass appropriate orders.

The Criminal Miscellaneous Case is allowed to the extent indicated above.

(K.T.SANKARAN)
Judge

ahz/

K.T.SANKARAN, J.

CRL.M.C.NO. OF

O R D E R

September, 2006